

## Securities and Exchange Commission

## § 240.3a1-1

should be marked to show what changes have been made.

(f) After the filing is complete, the applicable Division will review the application. Once all questions and issues have been answered to the satisfaction of the Division, the staff will make an appropriate recommendation to the Commission. After consideration of the recommendation by the Commission, the Commission's Office of the Secretary will issue an appropriate response and will notify the applicant. If the application pertains to a section of the Exchange Act pursuant to which the Commission has delegated its authority to the appropriate Division, the Division Director or his or her designee will issue an appropriate response and notify the applicant.

(g) The Commission, in its sole discretion, may choose to publish in the FEDERAL REGISTER a notice that the application has been submitted. The notice would provide that any person may, within the period specified therein, submit to the Commission any information that relates to the Commission action requested in the application. The notice also would indicate the earliest date on which the Commission would take final action on the application, but in no event would such action be taken earlier than 25 days following publication of the notice in the FEDERAL REGISTER.

(h) The Commission may, in its sole discretion, schedule a hearing on the matter addressed by the application.

[63 FR 8102, Feb. 18, 1998]

### **§ 240.3a1-1 Exemption from the definition of "Exchange" under Section 3(a)(1) of the Act.**

(a) An organization, association, or group of persons shall be exempt from the definition of the term "exchange" under section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons:

(1) Is operated by a national securities association;

(2) Is in compliance with Regulation ATS, 17 CFR 242.300 through 242.303; or

(3) Pursuant to paragraph (a) of § 242.301 of Regulation ATS, 17 CFR 242.301(a), is not required to comply with Regulation ATS, 17 CFR 242.300 through 242.303.

(b) Notwithstanding paragraph (a) of this section, an organization, association, or group of persons shall not be exempt under this section from the definition of "exchange," if:

(1) During three of the preceding four calendar quarters such organization, association, or group of persons had:

(i) Fifty percent or more of the average daily dollar trading volume in any security and five percent or more of the average daily dollar trading volume in any class of securities; or

(ii) Forty percent or more of the average daily dollar trading volume in any class of securities; and

(2) The Commission determines, after notice to the organization, association, or group of persons, and an opportunity for such organization, association, or group of persons to respond, that such an exemption would not be necessary or appropriate in the public interest or consistent with the protection of investors taking into account the requirements for exchange registration under section 6 of the Act, (15 U.S.C. 78f), and the objectives of the national market system under section 11A of the Act, (15 U.S.C. 78k-1).

(3) For purposes of paragraph (b) of this section, each of the following shall be considered a "class of securities":

(i) Equity securities, which shall have the same meaning as in § 240.3a1-1;

(ii) Listed options, which shall mean any options traded on a national securities exchange or automated facility of a national securities exchange;

(iii) Unlisted options, which shall mean any options other than those traded on a national securities exchange or automated facility of a national securities association;

(iv) Municipal securities, which shall have the same meaning as in section 3(a)(29) of the Act, (15 U.S.C. 78c(a)(29));

(v) Investment grade corporate debt securities, which shall mean any security that:

(A) Evidences a liability of the issuer of such security;

(B) Has a fixed maturity date that is at least one year following the date of issuance;

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(C) Is rated in one of the four highest ratings categories by at least one Nationally Recognized Statistical Ratings Organization; and

(D) Is not an exempted security, as defined in section 3(a)(12) of the Act, (15 U.S.C. 78c(a)(12));

(vi) Non-investment grade corporate debt securities, which shall mean any security that:

(A) Evidences a liability of the issuer of such security;

(B) Has a fixed maturity date that is at least one year following the date of issuance;

(C) Is not rated in one of the four highest ratings categories by at least one Nationally Recognized Statistical Ratings Organization; and

(D) Is not an exempted security, as defined in section 3(a)(12) of the Act, (15 U.S.C. 78o);

(vii) Foreign corporate debt securities, which shall mean any security that:

(A) Evidences a liability of the issuer of such debt security;

(B) Is issued by a corporation or other organization incorporated or organized under the laws of any foreign country; and

(C) Has a fixed maturity date that is at least one year following the date of issuance; and

(viii) Foreign sovereign debt securities, which shall mean any security that:

(A) Evidences a liability of the issuer of such debt security;

(B) Is issued or guaranteed by the government of a foreign country, any political subdivision of a foreign country, or any supranational entity; and

(C) Does not have a maturity date of a year or less following the date of issuance.

[63 FR 70917, Dec. 22, 1998]

DEFINITION OF “EQUITY SECURITY” AS  
USED IN SECTIONS 12(G) AND 16

**§ 240.3a4-1 Associated persons of an issuer deemed not to be brokers.**

(a) An associated person of an issuer of securities shall not be deemed to be a broker solely by reason of his participation in the sale of the securities of such issuer if the associated person:

(1) Is not subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, at the time of his participation; and

(2) Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities; and

(3) Is not at the time of his participation an associated person of a broker or dealer; and

(4) Meets the conditions of any one of paragraph (a)(4) (i), (ii), or (iii) of this section.

(i) The associated person restricts his participation to transactions involving offers and sales of securities:

(A) To a registered broker or dealer; a registered investment company (or registered separate account); an insurance company; a bank; a savings and loan association; a trust company or similar institution supervised by a state or federal banking authority; or a trust for which a bank, a savings and loan association, a trust company, or a registered investment adviser either is the trustee or is authorized in writing to make investment decisions; or

(B) That are exempted by reason of section 3(a)(7), 3(a)(9) or 3(a)(10) of the Securities Act of 1933 from the registration provisions of that Act; or

(C) That are made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer; or

(D) That are made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer;

(ii) The associated person meets all of the following conditions:

(A) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the